

COPY OF TRANSCRIPT

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x
JIMMY INNOCENT,

Plaintiff,

-against-

THE CITY OF NEW YORK, THE NEW YORK CITY
POLICE DEPARTMENT and unknown Police
Officers "JOHN DOE A-Z", individually
and in their capacities as Police
Officers of the NYC Police Department,

Defendants.

- - - - - x
65 Broadway
New York, New York

May 6, 2008
1:55 p.m.

DEPOSITION of THE NEW YORK CITY POLICE

DEPARTMENT, the Defendant in the above-entitled
action, by **OFFICER BRIAN MOORE**, held at the
above time and place, pursuant to Notice, taken
before Risa Karr, a shorthand reporter and
Notary Public within and for the State of New
York.

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2

A Yes.

3

4

Q What was your basis for your
conclusion that you had probable cause to
arrest Mr. Innocent?

5

A I'm sorry, can you repeat it?

6

7

Q What was the basis for your
conclusion that you had probable cause to
arrest Mr. Innocent?

8

9

10

11

12

13

A I believe I testified before he
was found to be trespassing, there were
weapons and marijuana in the same building,
same vicinity he was in.

14

15

16

17

18

Q Let's take a step back. When you
say there were weapons and marijuana in the
same vicinity in the building he was in, can
you be more be specific when you use the term
vicinity?

19

A Within the same enclosed space.

20

21

Q Is there a specific distance when
you use the term vicinity?

22

MS. SCHARFSTEIN: Objection.

23

A Approximate.

24

25

Q When you say vicinity, are you
talking a distance of five feet, ten feet or

1 B. Moore

25

2 some other distance?

3 A When I talk about vicinity in
4 particular?

5 Q Yes, with regard to this
6 particular instance, you said that there were
7 guns and drugs within the vicinity of Mr.
8 Innocent.

9 MS. SCHARFSTEIN: Objection.

10 A I didn't say that.

11 Q Correct me. Tell me what you did
12 say.

13 A Weapons and drugs.

14 Q You didn't use the term vicinity?

15 A Within the vicinity of Mr.
16 Innocent.

17 Q My question is when you say within
18 the vicinity of Mr. Innocent what do you mean
19 by that?

20 A Vicinity is an approximation of
21 distance.

22 Q What is your approximation of
23 distance when you use the term vicinity?

24 A Vicinity is a broad term.

25 Approximation is specific. We can get into

1 B. Moore

26

2 defining words. I'm trying to answer your
3 question the best that I can. If you can ask
4 me a specific question.

5 Q I'm trying to understand when you
6 said there were weapons and drugs within the
7 vicinity of Mr. Innocent.

8 A Yes.

9 Q I'm trying to understand when you
10 say within the vicinity what do you mean by
11 that?

12 A My definition of vicinity?

13 Q As it relates to this particular
14 instance.

15 MS. SCHARFSTEIN: Objection.

16 A For clarification purposes are you
17 asking me the approximate distance of the
18 weapons and drugs to Mr. Innocent?

19 Q Right. In terms of your usage of
20 the term vicinity, when you say vicinity I
21 guess that is my question. What distance are
22 you saying the weapons and drugs were in
23 relation to Mr. Innocent?

24 MS. SCHARFSTEIN: If you are
25 not sure of the question ask him

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B. Moore

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2

to clarify it.

3

A Are you asking me my definition of
4 vicinity?

5

MS. SCHARFSTEIN: It is the

6

attorney's job to ask the

7

question.

8

A I don't understand the question.

9

Q The question is -- are you asking
10 for my definition of vicinity? Let's take a
11 step back. Is it fair to say you effected the
12 arrest of Mr. Innocent?

13

A Yes.

14

Q Would it also be fair to say you
15 effected the arrest because there were weapons
16 and drugs within the vicinity of Mr. Innocent;
17 is that correct?

18

A Yes.

19

Q You also said you next effected
20 the arrest because you believe he was
21 trespassing?

22

A Yes.

23

Q With regard to your use of the
24 word vicinity, my question is when you use
25 that term as it related to Mr. Innocent could

1 B. Moore

28

2 you give me the distance that the weapons and
3 drugs were to Mr. Innocent?

4 MS. SCHARFSTEIN: How far
5 away were they from the weapons --

6 MR. PRESTON: If he doesn't
7 understand.

8 A I don't understand your question.

9 Q When you use the term vicinity
10 what do you mean by that?

11 A I use it as an umbrella term which
12 one would go back and tell the specific for
13 specifics.

14 Q Why don't we talk about the
15 approximation in terms of distance as it
16 relates to the weapons and drugs and Mr.
17 Innocent.

18 MS. SCHARFSTEIN: Objection.

19 Go ahead.

20 Q My question is where were the
21 drugs and weapons in relation to Mr. Innocent?

22 MS. SCHARFSTEIN: Objection.

23 A Are you asking for a specific -- I
24 don't understand the question again. Maybe
25 you could narrow it down for me.

1 B. Moore

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2 MR. PRESTON: I have to take
3 a ten-minute break to call this
4 judge.

5 (Whereupon, a recess was
6 taken at this time.)

7 Q I was asking questions earlier
8 about your testimony which you said that there
9 were weapons and drugs in the vicinity of Mr.
10 Innocent.

11 What is your basis for the
12 conclusion there were weapons and drugs in the
13 vicinity of Mr. Innocent?

14 MS. SCHARFSTEIN: Objection.

15 A Would you rephrase the question?

16 Q Sure. I'm asking upon what facts
17 do you rely upon to form the conclusion there
18 were weapons and drugs in the vicinity of Mr.
19 Innocent?

20 MS. SCHARFSTEIN: Objection.

21 A I'm trying to think of how best to
22 answer your question.

23 Q Sure. Do the best you can.

24 A Can you repeat it for me, please?

25 Q Upon what facts do you rely to

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B. Moore

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support your statement that there were drugs
3 and weapons in the vicinity of Mr. Innocent?

4

MS. SCHARFSTEIN: Objection.

5

6

A Okay. I can see weapons, I can
see a defendant.

7

8

Q When you say a defendant, are you
referring to Mr. Innocent?

9

A In this particular case, Mr.
10 Innocent, and they are in the vicinity of each
11 other.

12

13

Q You said you can see weapons. Did
you also say you can see drugs?

14

A At this point I see weapons.

15

16

Q You said they were within the
vicinity of Mr. Innocent. Now where did you
see that?

18

A The arrest location.

19

Q Where was that?

20

21

A If I can refer to my notes I can
tell you the exact address.

22

23

Q Before we try to get the exact
address was it at a specific location at that
address?

25

A In regards to?

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B. Moore

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2

Q Your statement when you say you
see weapons and you see a defendant.

4

A Yes, there is a specific location.

5

Q Where at the address, the arrest
location, did you see the weapons and the
defendant?

8

A The second floor.

9

Q Describe to me the second floor.

10

MS. SCHARFSTEIN: Objection.

11

A It appears to be a storage area.

12

Q Do you have an idea about how big
the storage area is?

14

A It would be an approximation. I
could be off by quite a distance.

16

Q Give me your best approximation.

17

A Again, this is just a guess, an
approximation, roughly the second floor is
maybe 20 feet by --

20

MS. SCHARFSTEIN: You can't
guess because that doesn't help
anyone. If you can give a
reasonable approximation then you
can give an answer, but only you
can decide if you can do that.

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B. Moore

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A I don't want to give you an exact
guess or approximation because I could be far
off. So as far as the dimensions of the
building?

6

Q No. We are talking about the
second floor.

8

9

10

11

A Right, but the second floor is the
same as the first floor as far as the
dimensions. The building was built straight
up and down.

12

13

14

Q So I understand, is it your
testimony that the size of the room is the
dimension of the building?

15

MS. SCHARFSTEIN: Objection.

16

Q I'm trying to ascertain --

17

18

19

20

21

A I'm trying to tell you I can't
give you an exact approximation without
possibly being off and I can't recall exactly
and I never knew the exact dimension of the
building.

22

23

24

25

Q Could you describe where you saw
the weapons in the second floor? Let's take a
step back. Does the second floor have rooms
or is it just an open space?

1 B. Moore

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2 A There is, from what I remember,
3 one room within a larger room.

4 Q Where is that room within the
5 larger room?

6 A Towards the back of the building.

7 Q Towards of the building?

8 A Back of the second floor.

9 Q Does that room have a door on it?

10 A Yes.

11 Q When you enter the second floor
12 was that door open or closed?

13 A It was open.

14 Q Who was in that room, do you
15 recall?

16 A I recall there was an individual
17 there. If I can refer to my notes I can give
18 you an exact person.

19 Q Do you recall whether Mr. Innocent
20 was in that room?

21 A No.

22 Q He was not in that room?

23 A At the time I was there?

24 Q Yes.

25 A No.

B. Moore

(3) 4

Q Where did you observe Mr. Innocent?

A On the second floor.

Q Where on the second floor?

A Approximately in the middle of the
floor.

Q The middle of the second floor.

8 Could you give me an approximation as to how
9 far he was from the room when you first
10 observed him?

11 A Approximately give or take some
12 feet, ten to fifteen.

13 Q Ten to fifteen feet from the room?

14 A Yes.

Q You said you also observed weapons?

16 A Yes.

Q Where did you observe the weapons?

A. I observed weapons on what

19 appeared to be a desk on the second floor.

Q Where was the desk in relation to
the room?

Whichever you choose, the most important thing is to make sure you're happy with your choice.

For the first time, the results of the 2010 Census are available online at 2010.census.gov.

1

B. Moore

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general.

3

Q Is there more than one room on the
second floor?

5

A No. There is one room on the
second floor.

7

Q You said there was a desk that you
observed weapons; was that on the second
floor?

10

A Yes, it was.

11

Q Was that inside the room you
observed this desk?

13

A No, it was not.

14

Q Where did you observe the desk in
relation to the room?

16

A Outside of the room against the
wall.

18

Q Of the room?

19

A Correct.

20

Q Mr. Innocent in relation to the
desk, how far was he from the desk?

22

A It is going to be another
approximation.

24

Q I understand.

25

A Roughly ten to fifteen feet.

1

B. Moore

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2

Q What was Mr. Innocent doing when
you observed him, when you first observed him?

4

A He was laying motionless on the
floor.

6

Q This was, again, ten to fifteen
feet from the room and ten to fifteen feet
from the desk?

9

10

A Approximately, an approximation,
yes.

11

12

Q Do you have an approximation as to
how tall Mr. Innocent is?

13

A Between five and six feet.

14

15

Q Would it be fair to say that when
you observed Mr. Innocent laying down that the
room was not within his reach?

17

MS. SCHARFSTEIN: Objection.

18

A Define within his reach.

19

20

Q From where he was laying down
could he reach the room if he stretched his
arm out?

22

A No.

23

24

Q Would the same answer be the case
that where he was laying down at would he be
able to reach the desk if he stretched his arm

1

B. Moore

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2

A Correct.

3

Q The first time?

4

A Correct.

5

Q Where did you observe the weapon?

6

A Where?

7

Q Yes.

8

A Which weapon?

9

Q When you were there on June 25th
10 how many weapons did you observe?

11 A From what I can remember, three.

12 Q Where did you observe the weapons?

13 A I observed two weapons, from what
14 I remember, on the desk.

15 Q Where was the desk at, and is this
16 the desk you are referring to in this picture?

17 A The top right photograph is the
18 desk.

19 Q You said you observed two weapons
20 on the desk?

21 A Correct.

22 Q On top of the desk?

23 A Yes.

24 Q Where was the desk at?

25 A On the second floor of the

1 B. Moore

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2 building.

3 Q Where?

4 A Towards the back of the room.

5 Q Towards the back of what room?

6 Remember there is a room within a room.

7 A The larger room.

8 Q When you say the larger room where
9 was the desk in relation to the room within
10 the room?

11 A Is it from what I remember. I
12 don't believe you can tell from the
13 photograph. It was next to the wall which
14 separated one room from the other.

15 Q So the desk was next to the wall
16 of the room within the room, correct?

17 A Yes.

18 Q When we were talking earlier about
19 the table, are you referring to the desk
20 that's depicted in this picture?

21 A I don't remember saying table.

22 Q My question is when we were
23 talking about Mr. Innocent being ten to
24 fifteen feet away, were you referring to this
25 desk or were you referring to a table?

1

B. Moore

68

2

A I was referring to the desk.

3

4

Q You observed two guns on this
desk?

5

A No.

6

7

Q I misunderstood your testimony.

What did you observe on the desk?

8

9

A A switch blade and at least one
other knife. I don't remember the exact type.

10

11

Q Did you observe any other weapons
when were you there on June 25th?

12

A Yes.

13

14

Q What did you observe and where did
you observe it at?

15

A I observed a handgun.

16

Q Where did you observe it?

17

18

A That weapon was found in the
second room.

19

Q That's the room within the room?

20

A The room within the room.

21

22

Q Where was it found in the room
within the room?

23

A Inside of a green ammo box.

24

Q Was the ammo box closed?

25

A No.

1 B. Moore

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2 Q It was open?

3 A Correct.

4 Q Where was the green ammo box
5 within that room?

6 A You walk into the room, on the
7 left-hand side when you walk in.

8 Q What was there on the left-hand
9 side?

10 A The ammo box.

11 Q Was it on the floor or was it on a
12 desk?

13 A I don't remember exactly.

14 Q Who was in that room when you
15 observed that green ammo box?

16 A Defendants. If I can refer to my
17 notes I can tell you specifically.

18 Q Do you know whether Mr. Innocent
19 was in that room?

20 A Yes.

21 Q In the room within a room?

22 A I knew where he was.

23 Q My question is when you saw the
24 green ammo box was Mr. Innocent in that room
25 where the green ammo box was?

1 B. Moore

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2 photograph.

3 Q Let me have you take a look at
4 this.

5 MR. PRESTON: We will mark
6 it as Plaintiff's 3 and mark this
7 as Plaintiff's 4.

8 (Documents were marked as
9 Plaintiff's Exhibits 3 and 4, for
10 identification, as of this date.)

11 Q Take a look at Plaintiff's 3.

12 A Okay.

13 Q Can you identify what has been
14 marked as Plaintiff's 3?

15 A Yes, I can.

16 Q What is that?

17 A It is a property clerk invoice.

18 Q For who?

19 A For the police department.

20 Q Relating to who?

21 A A prisoner name Innocent, Jimmy.

22 Q Is this a document that you
23 prepared?

24 A Yes.

25 Q Is this based upon information you

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B. Moore

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2

gather after searching Mr. Innocent?

3

A Yes.

4

Q Would this reflect the results of
your search of Mr. Innocent?

5

A Yes.

6

Q Other than what is reflected here
would there be anything else that you found on
Mr. Innocent's person when you searched him?

7

8

9

A I would have to refer to my notes
to be sure.

10

11

Q If there was something else would
it be reflected on this document?

12

13

A No.

14

Q Why not?

15

16

A This is a document collecting
money. The money goes on separate documents
than other items.

17

18

Q I will have you take a look at
what has been marked Plaintiff's 4. Can you
identify what has been marked as Plaintiff's
4?

19

20

A Yes.

21

22

Q What is Plaintiff's 4?

23

24

A Affidavit in Support of Search

1 B. Moore

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2 Warrant.

3 Q Who prepared this document?

4 A Assistant district attorney.

5 Q Is this a document that you
6 reviewed?

7 A Yes.

8 Q Is this a document that you
9 reviewed prior to signing?

10 A Yes.

11 Q When you reviewed it was this
12 document accurate?

13 A I believe so.

14 Q Let's start at paragraph 6. Take
15 a look at paragraph 6. Just look at the first
16 sentence. Actually, why don't you read all of
17 paragraph 6 and then I will ask you questions
18 about it. Okay?

19 A Okay.

20 Q You had a chance to finish that
21 paragraph?

22 A Yes.

23 Q Let's start with you were at 31
24 West 138th Street, correct, on June 25th?

25 A Yes.

1 B. Moore 74

2 Q How did you get there?

3 A By car.

4 Q Who were you there with?

5 A In the car?

6 Q Yes.

7 A My partner.

8 Q Why were you there?

9 A We were driving down the street.

10 Q You were driving down the street
11 and what did you observe?

12 A Observed an individual was
13 standing in front of a commercial
14 establishment.

15 Q Was he outside or inside?

16 A Outside.

17 Q What, if anything, did you observe
18 beyond that?

19 A I observed an individual inside
20 the commercial establishment.

21 Q What did you do after that point,
22 the observation of the two individuals?

23 A Went upstairs.

24 Q You were in a car and you said you
25 were with your partner?

1 B. Moore

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2 A The officer I was working with.

3 Q Who was that?

4 A Sergio Marino.

5 Q You were with Officer Marino and
6 you observed two individuals?

7 A One individual.

8 Q Then you observed two individuals
9 in a store?

10 A Correct.

11 Q Were the lights on or off?

12 A Off.

13 Q What did you do at the point where
14 you observed these two individuals?

15 A Asked them questions.

16 Q What did you ask them?

17 A I asked them different questions.

18 Q Do you recall what you asked them?

19 A If I can refer to the affidavit.

20 Q This document here, okay. Because
21 you don't have an independent recollection of
22 what you asked them, correct?

23 A Yes.

24 Q That's why you have to refer to
25 the affidavit, correct?

1

B. Moore

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2

A Yes.

3

Q Go ahead.

4

A Asked an individual standing out
front of the commercial establishment do you
live around here.

7

Q Where was Officer Marino when you
asked him that?

9

A He was driving the vehicle behind
the wheel of the car.

11

Q When you asked the question where
were you?

13

A In the car.

14

Q You were asking him these
questions from the car window?

16

A The question I just read you, yes.

17

Q What happened at that point, what
did he respond?

19

A Yeah, in here.

20

Q Then what happened at that point?

21

A I asked him what floor.

22

Q He said?

23

A Second.

24

Q What happened at that point?

25

A I asked what apartment. That's

1 B. Moore

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2 it.

3 Q What did he say?

4 A Did not reply.

5 Q What happened at that point?

6 A Started to walk away.

7 Q Who?

8 A The gentleman I was asking
9 questions.

10 Q Do you know if either of those
11 gentlemen, the gentlemen you were asking
12 questions to or the gentleman inside the
13 store, were either of those gentlemen Jimmy
14 Innocent?

15 A No.

16 Q He started to walk away you said?

17 A Yes.

18 Q What happened at that point?

19 A We exited the car.

20 Q When you say he walked away, what
21 direction did he walk when he was walking
22 away?

23 A West.

24 Q He was walking away from the
25 store?

1

B. Moore

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2

A Yes.

3

Q What happened at that point?

4

A We got out of the car.

5

Q Okay. Then what happened?

6

7

A Then we got out of the car. He
said why are you bothering me. You cannot not
mess with me.

8

Q What happened at that point?

9

10 A I believe my partner and I noticed
11 keys on the inside of the commercial
12 establishment.

13

Q In the door?

14

15 A In the lock, hanging from the

16

Q Inside?

17

18 A Yes. I believe my partner or I, I
19 don't recall who, asked whose keys do those
belong to, something to that effect, which he
20 responded that's my key.

21

Q What happened at that point?

22

23 A "Defendant started to walk away
24 while yelling something that sounded like John
25 while tilting his head and looking at the
second floor of the commercial establishment."

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2 Q What was the individual inside the
3 store doing at this point?

4 A I didn't know there was an
5 individual inside the store.

6 Q When did you learn there was an
7 individual inside the store?

8 A When I looked inside the store.

9 Q At what point did you do that?

10 A Once we placed the original
11 individual that we stopped in the back seat of
12 our police car.

13 Q Once you arrested the original
14 individual?

15 MS. SCHARFSTEIN: Objection.

16 A Define arrest.

17 Q What do you define as arrest?

18 A I have a few definitions.

19 Q Give me the few definitions you
20 have of arrest.

21 A To stop.

22 Q To stop somebody is not an arrest.

23 A To stop period is an arrest.

24 Q To stop an individual is an
25 arrest?

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B. Moore

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2

Q Tell me what other definition you
have for arrest.

4

A There is the procedural arrest.

5

Q What does that mean?

6

A Placing someone in custody and
doing arrest paperwork and giving them
specific charges.

9

Q Do you have any other definition
of arrest?

11

A Not at this time.

12

Q So the individual that you put in
the station car, he was under arrest, correct,
even by your own definition?

15

A Yes.

16

Q What did you do at that point?
Let me step back. You testified at some point
the gentleman said the name John and looked up
at the second floor?

20

A Yes.

21

Q What did you do then?

22

A We stopped him from walking away.
We asked him what he was doing. He didn't say
anything. We put him in the back seat of the
police car.

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2

Q What did you do at that point?

3

A I believe we put over the radio
that we were entering a building.

5

Q What did you do at that point?

6

A Called for assistance before we
entered the building, at which point we looked
inside the building. It was open to you. We
saw another individual who appeared to be
sitting in the building.

11

Q Sitting where in the building?

12

A Halfway back in the commercial
establishment.

14

Q On the first floor?

15

A Correct.

16

Q What happened at that point?

17

A Referring to the notes. "Asked
the defendant if he lived at the location,
defendant did not respond; did ask if there
was anyone else in the building or upstairs.
This individual said yeah, they are playing a
game."

23

Q What happened at that point?

24

A We walked up to the second floor.

25

Q How did you get up to the second

1 B. Moore

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2 floor?

3 A One foot in front of the other
4 upstairs.

5 Q Elevator, stairs?

6 A Stairs.

7 Q Where were the stairs located?

8 A From what I remember,
9 approximately in the middle of the first
10 floor.

11 Q Was there a door leading up to the
12 second floor?

13 A No.

14 Q So you and Officer Marino
15 proceeded to the second floor?

16 A Yes.

17 Q What did you do with the
18 individual that was on the first floor?

19 A We placed him in handcuffs and had
20 additional officers watch him in front of the
21 location.

22 Q So prior to you proceeding up the
23 stairs there were other officers on the scene?

24 A Yes.

25 Q Do you remember who the other

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B. Moore

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officers were?

3

A I don't remember.

4

Q Do you know whether there was any
5 sergeants on the scene?

6

A At this point in time?

7

Q Yes.

8

A No, I don't remember.

9

Q After leaving this individual with

10 the other officers who proceeded upstairs?

11

A Officer Marino, myself and there
12 were other officers. I couldn't tell you. I
13 don't remember how many or their names.

14

Q What happened when you arrived on
15 second floor?

16

A "I saw Officer Marino run, I
17 followed, we had a really strong sent of
18 marijuana from the second floor. It was dark
19 to the point we needed flashlights."

20

Referring to my notes. "We observed other
21 individuals appear to be sleeping on the
22 second floor. They did not respond to us
23 yelling police. They were not awake." We had
24 to physically wake them.

25

Q Is that indicated here in the

1 . B. Moore 85

2 document you are referring to?

3 A This is from recollection. We saw
4 two water pipes, which are devices used for
5 smoking marijuana on top of the desk in the
6 second room. We observed a switch blade knife
7 on top of the same desk in the second room, 22
8 caliber ammunition on the top of the same desk
9 in the back of the room.

10 Q From your recollection, did you
11 observe anything else on the desk?

12 A Not from my recollection.

13 Q Other than what is here that's all
14 that was on the desk?

15 A No.

16 Q What else was on the desk?

17 A I would have to refer to my notes.

18 Q What happened at that point?

19 A At that point we were concerned
20 with any individuals that we could not see in
21 the room. It was dark. There was a room in
22 the back, a smaller room which had a door open
23 which was also dark, entered, actually I found
24 a light switch from what I could recall,
25 turned on the light switch, defendant appeared

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in that room.

3

Q Was that Mr. Innocent?

4

A In the smaller room, no.

5

Q Okay.

6

A I observed what appeared to be a gravity knife.

8

Q This is the individual that's in the back room?

10

A Yes. Also observed marijuana in the back room, ammunition box in the back room, large capacity black magazine in the back room with other various calibers of ammunition.

15

Q In the back room?

16

A In the back room and a 22 caliber revolver in the back room.

18

Q What happened at that point?

19

A The defendant or individual in the back room was asked to exit the room. He walked out of the room. I took the gravity knife from his person. He tried to run back into the back room figuring he was going for a weapon. We stopped him, at which point he refused to let us place him in cuffs to stop

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2 him from going into the back room.

3 Q What happened at that point?

4 A At that point we had all
5 individuals in that room on the second floor
6 in handcuffs. We asked them if anyone lived
7 at the location.

8 Q Is that indicated in the notes
9 here that you are referring to?

10 A I do not believe so. Again, this
11 is referring to the sixth paragraph from
12 before. This is no longer in the sixth
13 paragraph.

14 Q If you want you can you can look
15 at the entire document and tell me if you see
16 that in the entirety of this document where
17 you questioned them if they lived at this
18 location.

19 A I don't see it mentioned in this
20 document.

21 Q Was that based on your
22 recollection?

23 A Was what based on my recollection?

24 Q The testimony you just gave about
25 asking if anybody lived there.

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2 A Yes.

3 Q What happened at that point?

4 A The individuals were taken from
5 the building, taken to the precinct, processed
6 as arrest.

7 Q I'm going to hand you a packet of
8 documents that was produced in discovery by
9 the City of New York and you referred to your
10 notes a couple of times earlier. Can you go
11 through the documents?

12 MR. PRESTON: Off the
13 record.

14 (Whereupon, a discussion was
15 held off the record.)

16 Q Documents that are Bate stamped
17 NYC 0000708 through NYC 000265.

18 MS. SCHARFSTEIN: That
19 couldn't be that packet. That
20 packet is way to small to have
21 more than one hundred pages of
22 documents. There must be a gap
23 somewhere.

24 Q So the first series is 000078
25 through 000086. That's the first series.

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gave? Are you looking for something specific?

3

Q Now that you have reviewed the documents I want you to tell me what upon did you rely on in effecting the arrest of Mr. Innocent?

6

A Of the view of the weapons in proximity to Mr. Innocent.

7

Q Just so we are clear, you were the arresting officer, correct?

11

A Yes.

12

Q Did you rely on anything else other than what you testified to, review of the weapons in proximity to Mr. Innocent to support your arresting Mr. Innocent?

16

A Yes.

17

Q What?

18

A Defendant's statement.

19

Q Defendant's statement, who?

20

A Innocent's statement.

21

Q What were those statements?

22

A I can't recall specifically, but when asked if he lived in the building he said no.

25

Q Other than view of the weapons in

1 B. Moore 97

2 proximity to Mr. Innocent, and the statement
3 he didn't live in the building, was there any
4 other basis for the arrest of Mr. Innocent?

5 A Yes.

6 Q What?

7 A An individual on the same floor
8 ran when he saw the police, another individual
9 within the same floor possessed a weapon.
10 Totality of circumstances, which I provided.

11 Q Other than the circumstances that
12 you just articulated, was there any other
13 basis that you had that supported your
14 conclusion to arrest Mr. Innocent?

15 A No.

16 Q That was it?

17 A Yes.

18 Q With regard to the individual you
19 said possessed the weapon, that individual who
20 was the individual in the back room, correct?

21 A Yes.

22 Q That was the guy you testified had
23 the gravity knife?

24 A Yes.

25 Q With regard to the individual that

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you said tried to run when they saw you, was
that individual also the individual in the
back room?

5

A No.

6

Q Who was that individual, do you
know?

8

A I don't remember.

9

Q Do you recall where that
individual was when you entered the room?

11

A I didn't see him when initially
entered the room.

13

Q When you say do you know what he
was running from?

15

A We yelled police. Officer Marino
was in front of me going up the stairs. I can
only infer he ran from Officer Marino.

18

Q You don't know where he started
running from, correct?

20

A It would have to be from a spot
you couldn't see the officers. I don't know
specifically where.

23

Q How about with regard to, you said
the view of the weapons in proximity to Mr.
Innocent.

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A Correct.

3

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A Correct.

Q When you say in proximity to the weapons, are you referring to the weapons that were in the back room? When you say view of the weapons in proximity to Mr. Innocent, are you referring to the weapons in the back room?

A As far as --

Q I asked you about the basis for why you arrested Mr. Innocent and you said due to the fact you said in view of the weapons that were in proximity to Mr. Innocent and I'm asking you what weapons are you referring to?

A The weapons on top of the desk.

Q How about the weapons in the back room?

A At that point in time, no.

Q So the weapons in the back room did not form a basis for your arrest of Mr. Innocent, correct?

A I don't understand forming a basis.

Q When you arrested Mr. Innocent and you said you arrested him based upon the weapons that were in proximity to Mr. Innocent

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I'm asking you what weapons are you referring
3 to? Are you referring to any weapons that
4 were in the back room?

5

A As far as the basis for his
6 arrest?

7

Q Correct.

8

A No.

9

Q We are talking about only the
10 weapons that were on the desk, correct?

11

A For the basis for his arrest?

12

Q Yes.

13

A Yes.

14

Q He was charged with possession of
15 marijuana?

16

A Yes.

17

Q What was the basis for the charge
18 of possession of marijuana?

19

A The devices on the desk which
20 contained marijuana.

21

Q The devices that were on the desk
22 that you said, what were those devices?

23

A Water bongs.

24

Q Did those water bongs have
25 marijuana in it?

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2 A Residue.

3 Q Do you know?

4 A I would have to refer to notes.

5 Q What notes would you have to refer
6 to? There is the arrest report, this
7 affidavit, there is also the warrant
8 affidavit. Would any of those help you in
9 answering the question?

10 A I don't know if the water bongs
11 were sent to be tested for marijuana.

12 Q Do you know whether the water
13 bongs served as a basis for the charge of
14 criminal possession of marijuana against Mr.
15 Innocent?

16 MS. SCHARFSTEIN: Objection.

17 Q Do you understand the question?

18 A No.

19 Q With regard to the charge of
20 criminal possession of marijuana, upon which
21 facts did you rely in charging Mr. Innocent
22 with criminal possession of marijuana?

23 MS. SCHARFSTEIN: Objection.

24 A Which facts?

25 Q Yes. What information did you

1 B. Moore 102

2 rely?

3 A That there was marijuana on the
4 second floor.

5 Q Where?

6 A There was marijuana inside of
7 water bongs.

8 Q Your testimony is you believe
9 there was marijuana inside the water bongs but
10 you are not sure?

11 MS. SCHARFSTEIN: Objection.

12 A No.

13 Q No what, you are not sure?

14 A That wasn't my testimony.

15 Q Do you know whether there was
16 marijuana inside the water bongs? Do you
17 know?

18 A I would have to have a report that
19 said it was tested positive in order to say I
20 knew there was marijuana.

21 Q In charging Mr. Innocent with
22 criminal possession of marijuana did you base
23 it on the water bongs?

24 MS. SCHARFSTEIN: Objection.

25 A Could you rephrase the question?

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2 Q I will ask it again. With regard
3 to the charge of criminal possession of
4 marijuana, what facts did you base it on?
5 What facts did you base the criminal
6 possession of marijuana?

7 MS. SCHARFSTEIN: Objection.

8 Q Or what information?

9 A That we found marijuana, over a
10 pound, on the second floor of the building.

11 Q Where did you find that marijuana?

12 A Inside the room within the room.

13 Q This is the back room?

14 A Yes.

15 Q Did you rely on any other
16 information in charging Mr. Innocent with
17 criminal possession of marijuana other than
18 what you just told me about?

19 MS. SCHARFSTEIN: Objection.

20 A Can you repeat?

21 Q Did you rely upon any other
22 information as the basis to charge Mr.
23 Innocent with criminal possession of
24 marijuana?

25 MS. SCHARFSTEIN: Objection.

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A If there was no marijuana, a pound
3 or more inside the --

4

Q You tell me about the marijuana in
5 the room. My question was there any other
6 information that you relied upon in charging
7 Mr. Innocent with criminal possession of
8 marijuana other than what you told me?

9

MS. SCHARFSTEIN: Objection.

10

Q If the answer to that question is

11 no, that's fine.

12

A I don't understand the question of
13 basis.

14

Q Mr. Innocent was charged with
15 criminal possession of marijuana, correct?

16

A Yes.

17

Q There had to be some fact or facts
18 upon which there was a reliance in coming to
19 the conclusion that he criminally possessed
20 marijuana, correct?

21

MS. SCHARFSTEIN: Objection.

22

A What do you mean by fact?

23

Q Or information. There had to be
24 some information upon which there was the
25 basis for charging Mr. Innocent for criminal

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possession of marijuana; isn't that correct?

3

A Yes.

4

Q My question is what information
was it?

6

A I saw marijuana.

7

Q Right. Where?

8

A In the room within the room.

9

Q I understand your testimony to be
that. My question is did you see marijuana
any other place that formed the basis for your
conclusion that Mr. Innocent criminally
possessed marijuana?

14

MS. SCHARFSTEIN: Objection.

15

A Rephrase the question.

16

Q Other than the marijuana you saw
in the room was there any other marijuana that
formed the basis of your conclusion that Mr.
Innocent criminally possessed marijuana?

20

MS. SCHARFSTEIN: Objection.

21

A Basis.

22

Q Or information that you relied
upon in charging Mr. Innocent with criminal
possession of marijuana?

25

MS. SCHARFSTEIN: Objection.

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Q Do you understand the question?

3

A Yes. The answer is yes.

4

Q What other information did you have?

5

A Proximity to the marijuana.

6

Q Again, we are talking about the marijuana in the back room, correct?

7

A Yes.

8

Q Other than the marijuana in the back room, did he have proximity to any other marijuana on the second floor?

9

MS. SCHARFSTEIN: Objection.

10

A I believe I already answered this.

11

Q Well, just to clarify.

12

A Ask me again.

13

Q Other than the marijuana in the back room, did Mr. Innocent have proximity to any other marijuana on the second floor?

14

A Yes.

15

MS. SCHARFSTEIN: Objection.

16

Q Where was that?

17

A Inside the water bong.

18

Q Other than the water bong, did Mr.

19

Innocent have any proximity to any other

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marijuana on the second floor?

3

A At that time, no.

4

Q How about the charge of possession
of firearm; what firearm are you referring to?

5

A Which firearm are you referring
to?

6

Q According to the arrest report
there is a reference to a firearm. Which
firearm are you referring to?

7

A According to the arrest report I'm
referring to the firearm found in the second
room, the room within the room.

8

Q How about with regard to
possession of a weapon in the third degree.
What weapon are you referring to?

9

A The weapon, the gravity knife.
Sorry, that's incorrect. I believe it is a
switch blade, which is on the desk of the
bigger room.

10

Q Let me have you take a look at the
second page of Plaintiff's Exhibit 5, which is
NYC 0000081, third full paragraph.

11

A Okay.

12

Q Do you see where it says deponent?

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That would be you, correct?

3

A Yes.

4

Q It says deponent observed on the
second floor a switch blade knife; do you see
that?

7

A Yes.

8

Q That switch blade knife, is that
the knife you referred to as being on the
desk?

11

A Yes.

12

Q Then is says you observed ten
rounds of 22 caliber ammunition.

14

A Yes.

15

Q Where was that at?

16

A Approximately ten rounds and it
was on the same desk as the switch blade.

18

Q How about the three water pipes?

19

A I don't recall specifically where
each water pipe was recovered from.

21

Q You don't recall specifically. Do
you recall where any of the water pipes were?

23

A They were all in that greater
room.

25

Q Were they on the desk or not?

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2 A I don't recall specifically.

3 Q Do you recall whether any of them
4 were on the desk?

5 A I'm sorry?

6 Q Do you recall whether any of the
7 water pipes were on the desk?

8 A I don't recall.

9 Q Do you recall whether any of the
10 water pipes were within reaching distance of
11 Mr. Innocent?

12 A I don't recall.

13 Q Who's Police Officer Lugo?

14 A He is an officer that worked at
15 the 32.

16 Q What is his involvement with this
17 matter, do you know?

18 A I believe he helped conduct the
19 search warrant.

20
21 (Continued on next page to
22 accommodate jurat.)
23
24
25